

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

AARON L. BELL,

Plaintiff,

v.

CITY OF SPOKANE, J.
CHRISTENSEN, SGT.
PREUNIGER, and UNKNOWN
SUPERVISORS,

Defendants.

CASE NO. 2:21-CV-0146-TOR

ORDER GRANTING DEFENDANTS'
MOTION FOR PARTIAL
SUMMARY JUDGMENT

BEFORE THE COURT is Defendants' Motion for Partial Summary

Judgment Re: Defendant Preuninger (ECF No. 24). This matter was submitted for consideration without oral argument. The Court has reviewed the record and files herein, and is fully informed. For the reasons discussed below, Defendants' Motion for Partial Summary Judgment Re: Defendant Preuninger (ECF No. 24) is granted.

//

ORDER GRANTING DEFENDANTS' MOTION FOR PARTIAL
SUMMARY JUDGMENT ~ 1

1 BACKGROUND

2 This case arises from an arrest made by the Spokane Police Department
3 (“SPD”) in Spokane, Washington. *See* ECF No. 1-2. Prior to this action, on
4 February 3, 2020, Plaintiff filed suit for largely the same events at issue against
5 Defendants City of Spokane, J. Christensen, D. Dunkin, J. Curtis, and E.
6 Kannberg. *See Bell v. City of Spokane et al.*, 2:20-cv-00051-TOR (“*Bell I*”). In
7 that action, Plaintiff listed the following causes of action in the amended
8 complaint: (1) excessive force in violation of the Fourth Amendment, (2) failure to
9 intervene in violation of the Fourth Amendment, (3) cruel and unusual punishment
10 in violation of the Eighth Amendment, (4) failure to provide adequate medical care
11 in violation of the Fourteenth Amendment, (5) failure to provide a police report or
12 internal affairs investigation, and (6) battery and gross negligence or willful and
13 wanton misconduct in violation of state law. *See Bell I*, ECF No. 21.

14 On September 23, 2020, while Plaintiff was represented by counsel, the
15 Court granted in part and denied in part Defendants’ motion for summary
16 judgment and dismissed Defendants D. Dunkin, J. Curtis, and E. Kannberg with
17 prejudice. *See Bell I*, ECF No. 46. As a result of that order, the Court dismissed
18 all of Plaintiff’s claims with prejudice except Plaintiff’s Fourth Amendment and
19 state related claim for excessive force based on the allegation that Officer
20 Christensen grabbed the Plaintiff’s handcuffs and dragged him into the vehicle,

1 thereby breaking Plaintiff's clavicle. *Bell I*, ECF No. 46 at 23. On January 13,
2 2021, the Court dismissed Plaintiff's action without prejudice following Plaintiff's
3 notice of stipulated voluntary dismissal. *See Bell I*, ECF Nos. 51, 53.

4 On April 13, 2021, Plaintiff, now proceeding *pro se*, initiated the present
5 action ("*Bell II*") by filing a complaint in Spokane County Superior Court against
6 the aforementioned Defendants with the addition of Defendants Lt. Terry
7 Preuninger¹ and Unknown Supervisors. ECF No. 1-2. On April 26, 2021,
8 Defendants removed the action to this Court. ECF No. 1. Plaintiff failed to
9 identify the unknown supervisors by the date to amend pleadings or add parties set
10 forth in the Jury Trial Scheduling Order, ECF No. 10 at ¶ 3, nor has he served
11 them.

12 On August 31, 2021, the Court granted Defendants' motion for partial
13 dismissal, finding *res judicata* barred the claims made in *Bell I* that the Court
14 dismissed with prejudice: the only *Bell I* claims that survived are the Fourth
15 Amendment excessive force against Officer Christensen and related state law
16 claims against Officer Christensen and the City of Spokane. ECF No. 23. As a
17 result, the Court dismissed Defendants D. Dunkin, J. Curtis, and E. Kannberg with

18
19

¹ The case caption lists "SGT Preuninger." However, Defendants refer to
20 Defendant Lt. Preuninger. The Court will use the latter title and name.

1 prejudice. *Id.* The Court also granted Plaintiff leave to amend his complaint (as
2 requested in ECF No. 15) within 30 days but Plaintiff never filed a first amended
3 complaint. *Id.* Therefore, Plaintiff's complaint (ECF No. 1-2) remains operative.

4 On January 21, 2022, Defendants filed the present motion for partial
5 summary judgment, moving to dismiss claims against Defendant Lt. Preuninger.
6 ECF No. 24. Although Plaintiff is not entitled to notice of summary judgment
7 rules as a non-prisoner *pro se* litigant, *Bias v. Moynihan*, 508 F.3d 1212, 1223 (9th
8 Cir. 2007), Plaintiff nonetheless received notice. ECF No. 28. The parties filed
9 their respective response and reply. ECF Nos. 31-36.

10 **FACTS**

11 The Court notes the statement of material facts are largely the same as those
12 presented on summary judgment in *Bell I*.² Compare *Bell I*, ECF No. 23 with *Bell*
13 *II*, ECF Nos. 27, 32. The Court will address facts specific to the partial summary
14 judgment here, i.e. facts relating to Lt. Preuninger's conduct the night of Plaintiff's
15 injury. Except where noted, the following facts are not in dispute.

16 On August 23, 2019, Lt. Preuninger, along with other officers, responded to
17 a fight involving Plaintiff, who consumed alcohol at the bar. ECF No. 27 at 2, ¶ 1;

18
19 ² As found in the Court's previous order, the Court takes judicial notice of the
20 pleadings and orders in *Bell I*. See ECF No. 23 at 5-6.

1 32 at 2, ¶ 8. Following Plaintiff's arrest, the officers instructed Plaintiff multiple
2 times to enter the police vehicle while handcuffed. ECF No. 27 at 5, ¶ 11.
3 Plaintiff continued to refuse to enter the vehicle (Plaintiff asserts he was unable to
4 while handcuffed) so Officer Christensen walked around the opposite side of the
5 vehicle and pulled Plaintiff backwards into the vehicle. ECF No. 27 at 7, ¶ 15.
6 The parties dispute where Officer Christensen grabbed Plaintiff and the body cam
7 footage does not explicitly show how Plaintiff was pulled inside the vehicle. ECF
8 No. 37.

9 It is undisputed that Lt. Preuninger did not pull Plaintiff into the police
10 vehicle, was not in proximity to Officer Christensen to prevent his method of
11 pulling Plaintiff into the vehicle, and did not write a police report or initiate an
12 internal investigation following the incident. *See* ECF Nos. 27, 32.

13 DISCUSSION

14 I. Summary Judgment Standard

15 The Court may grant summary judgment in favor of a moving party who
16 demonstrates "that there is no genuine dispute as to any material fact and that the
17 movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). In ruling
18 on a motion for summary judgment, the court must only consider admissible
19 evidence. *Orr v. Bank of America, NT & SA*, 285 F.3d 764 (9th Cir. 2002). The
20 party moving for summary judgment bears the initial burden of showing the

1 absence of any genuine issues of material fact. *Celotex Corp. v. Catrett*, 477 U.S.
2 317, 323 (1986). The burden then shifts to the non-moving party to identify
3 specific facts showing there is a genuine issue of material fact. See *Anderson v.*
4 *Liberty Lobby, Inc.*, 477 U.S. 242, 256 (1986). “The mere existence of a scintilla
5 of evidence in support of the plaintiff’s position will be insufficient; there must be
6 evidence on which the jury could reasonably find for the plaintiff.” *Id.* at 252.

7 For purposes of summary judgment, a fact is “material” if it might affect the
8 outcome of the suit under the governing law. *Id.* at 248. Further, a dispute is
9 “genuine” only where the evidence is such that a reasonable jury could find in
10 favor of the non-moving party. *Id.* The Court views the facts, and all rational
11 inferences therefrom, in the light most favorable to the non-moving party. *Scott v.*
12 *Harris*, 550 U.S. 372, 378 (2007). Summary judgment will thus be granted
13 “against a party who fails to make a showing sufficient to establish the existence of
14 an element essential to that party’s case, and on which that party will bear the
15 burden of proof at trial.” *Celotex*, 477 U.S. at 322. While a *pro se* litigant’s
16 allegations are to be liberally construed, non-prisoner “*pro se* litigants in the
17 ordinary civil case should not be treated more favorably than parties with attorneys
18 of record.” *Jacobsen v. Filler*, 790 F.2d 1362, 1364 (9th Cir. 1986).

19 //

20 //

1 **II. Lt. Preuninger**

2 Defendants move for summary judgment on the grounds that Plaintiff cannot
3 assert any viable claim against Lt. Preuninger. ECF No. 24. Plaintiff concedes
4 summary judgment is appropriate on Plaintiff's failure to intervene, cruel and
5 unusual punishment, and inadequate medical care claims against Lt. Preuninger.
6 ECF No. 31 at 17 ("Defense (B)(C)(D) ... Plaintiff concedes to these issues).
7 However, it appears Plaintiff maintains Lt. Preuninger is liable for his "inaction" in
8 witnessing the alleged constitutional violation and failing to investigate or write a
9 report. *Id.* at 17-19.³

10 As set forth in the Court's prior order, a Section 1983 claim requires
11 "personal participation" in the alleged violation of constitutional rights. *See* ECF
12 No. 23 at 13; *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989). A supervisor
13 may be liable if (1) he has personal involvement in the constitutional deprivation,
14 or (2) there is sufficient causal connection between the supervisor's wrongful

15
16
17 ³ Plaintiff "is fully aware that the only claims that are remaining at this time
18 are (1) All Forth [sic] Amendment claim against Officer James Christensen City of
19 Spokane." ECF No. 31 at 3. Despite this concession, the Court will nonetheless
20 address Plaintiff's arguments regarding Lt. Preuninger.

1 conduct and the constitutional violation. *Hansen v. Black*, 885 F.2d 642, 646 (9th
2 Cir. 1989).

3 First, Plaintiff cites *Starr v. Baca*, 652 F.3d 1202 (9th Cir. 2011) for the
4 proposition that Lt. Preuninger was deliberately indifferent to Officer Christensen
5 pulling Plaintiff into the police vehicle. ECF No. 31 at 16. A supervisor may be
6 held liable on a theory “for deliberate indifference based upon the supervisor’s
7 knowledge of and acquiescence in unconstitutional conduct by his or her
8 subordinates.” *Starr*, 652 F.3d at 1207. In *Starr*, the supervisor was “given notice,
9 in several reports, of systematic problems in the county jails under his supervision
10 that have resulted in these deaths and injuries” but continued to fail to protect
11 inmates under his care. *Starr*, 652 F.3d at 1216. This case is easily
12 distinguishable. There is no evidence Lt. Preuninger witnessed or was even aware
13 of similar incidents to establish a pattern to which he failed to take action. There is
14 no evidence Lt. Preuninger had notice of the manner in which Officer Christensen
15 intended to get Plaintiff in the vehicle. The evidence in this case, including all
16 bodycam footage, indicates that Officer Christensen acted unilaterally. Indeed, the
17 Court already ruled that no officers had time or were in proximity to intervene as
18 the remaining officers were on the opposite side of the vehicle. *Bell I*, ECF No. 46
19 at 12-13. The mere fact that Lt. Preuninger witnessed Plaintiff entering the vehicle
20 does not create a genuine issue of material fact as to deliberate indifference to a

1 serious risk of Plaintiff's safety. Therefore, summary judgment as to Plaintiff's
2 § 1983 claim for Lt. Preuninger's "deliberate indifference" is appropriate.

3 Second, as already noted, Plaintiff does not have a standalone constitutional
4 right to "an accurate police report" nor an "internal affairs investigation." ECF No.
5 23 at 14 (dismissing Lt. Wohl); *see also Bell I*, ECF No. 46 at 16 (collecting
6 cases). To the extent that Plaintiff argues Lt. Preuninger should have investigated
7 the events, Plaintiff fails to set forth a violation of his constitutional rights.
8 Therefore, summary judgment as to Plaintiff's § 1983 claim for Lt. Preuninger's
9 failure to write a police report or conduct an internal investigation is appropriate.
10 Because Plaintiff has alleged no cognizable constitutional violation against Lt.
11 Preuninger, Lt. Preuninger must be dismissed from this action.

12 As an additional matter, Plaintiff had until August 6, 2021 to file any motion
13 to amend the pleadings or add parties. ECF No. 10 at 3, ¶ 3 (Jury Trial Scheduling
14 Order). Plaintiff did not file a motion to amend or to add parties to clarify the
15 identities of Unknown Supervisors, nor has he served them. As a result, Defendant
16 Unknown Supervisors must also be dismissed.

17 In sum, the remaining causes of action are: (1) Fourth Amendment excessive
18 force claim against Officer Christensen and (2) related state law claims against
19 Officer Christensen and the City of Spokane to the extent it may be held liable for
20 Officer Christensen's tortious conduct. RCWs 9A.16.020; 4.96.010.

1 **ACCORDINGLY, IT IS HEREBY ORDERED:**

2 1. Defendants' Motion for Partial Summary Judgment Re: Defendant
3 Preuninger (ECF No. 24) is **GRANTED**.
4 2. Defendant "SGT Preuniger" is **DIMISSED** with prejudice and Defendant
5 Unknown Supervisors are **DISMISSED** without prejudice. The Clerk
6 shall terminate these parties from the docket.

7 The District Court Executive is directed to enter this Order and furnish
8 copies to the parties.

9 DATED March 17, 2022.



A handwritten signature in blue ink that reads "Thomas O. Rice".

10
11 THOMAS O. RICE
12 United States District Judge
13
14
15
16
17
18
19
20